



**City of Coachella
Public Works Department**

**Request for Proposal (RFP)
Due: March 5, 2014 2 p.m.**

**Public Relations and Community Outreach Consulting
Services**

**City of Coachella
Public Works Department
53462 Enterprise Way
Coachella, CA 92236
760.501.8100Tel
760.398.1630 Fax
www.coachella.org**

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February 3, 2014

NOTICE INVITING PROPOSALS

Public Relations and Community Outreach Consulting Services

PUBLIC NOTICE IS HEREBY GIVEN that the City of Coachella, as AGENCY invites sealed proposals for the above stated project and will receive such proposals in the Public Works Department up to the hour of **2:00 pm, day the 5TH day of March, 2014.**

Proposals must be prepared on the approved proposal forms in conformance with the Instructions to Proposers and submitted in a sealed envelope plainly marked on the outside **“SEALED PROPOSAL FOR PUBLIC RELATIONS SERVICES,- DO NOT OPEN WITH REGULAR MAIL.”**

Bidders may obtain a copy of the Instruction to Proposers and Contract Documents from the City of Coachella Website at www.coachella.org, Public Works Department Bids and from the Public Works Department.

This contract will be for a twenty-four (24) month period after notice to proceed with an option to extend the contract for an additional year based on consultant performance.

All questions must be put in writing and be received by the City no later than **5:00 p.m. on Wednesday, February 26, 2014.** Requests for clarifications, questions and comments must be clearly labeled, **“Written Questions”** and addressed to **Maritza Martinez**, at www.mmartinez@coachella.org. The City is not responsible for failure to respond to a request that has not been labeled as such.

The AGENCY reserves the right to reject any or all proposals, to waive any irregularity, to accept any bid or portion thereof, and to take all proposals under advisement for a period of sixty (60) days.

Questions pertaining to the technical aspects of the contract should be directed to **Maritza Martinez (760) 501-8111.**

INSTRUCTION TO PROPOSERS

- 1. Proposal Format.** Original and four (4) copies (5 total) of each proposal should be submitted in the format specified in the RFP. The original copy of the proposal should be clearly labeled "Original" and be single-sided. Proposals must be submitted on all items and schedules included in the Contract Documents, to:
 - PART I – Consultant's Information
 - PART II – Consultant's Proposal – **all items in this section must be properly completed, executed, and submitted.**

The award of the contract, if it be awarded, will be to the most responsible responsive proposer whose proposal complies with all the requirements described. The award, if made, will be made within sixty days. The City will not provide any reimbursement for the cost of developing or presenting proposals in response to this RFP. Failure to include the requested information may have a negative impact on the evaluation of the Consultant's Proposal.

Selection as the most responsive, responsible, proposer does not guarantee the award of the contract. The award of the contract must be approved by the City Council and executed by the City Manager.

- 2. Interpretation of Documents.** Discrepancies, omissions, ambiguities, and requirements likely to cause disputes between trades and similar matters shall be promptly brought to the attention of the City, in writing, and to the attention of the Director of Public Works. When appropriate, Addenda will be issued by the City. No communication by anyone as to such matters except by Addenda affects the meaning or requirements of the Contract Documents.

- 3. Addenda.** City reserves the right to issue Addenda to the Contract Documents at any time prior to the submittal deadline set for submission of proposals. Each potential proposer shall leave with the City its name, address, phone number and e-mail address for the purpose of receiving Addenda. The City will cause copies of Addenda to be mailed, delivered or e-mailed to such names at such addresses. To be considered, a Contractor's Proposal must list and take into account all issued Addenda. Proposals, to be acceptable, must acknowledge receipt of all Addenda.

- 4. Clarifications.** Should a Bidder require clarifications of this NIB, the Bidder shall notify the City in writing. Should it be found that the point in question is substantive and is not clearly and fully set forth, the City shall issue a written addendum clarifying the matter which shall be sent to all known recipients of this NIB and will be posted on the City of Coachella website <http://www.coachella.org/bids>. All questions, clarifications or comments shall be put in writing and must be received by the City no later than **February 26, 2014 at 5pm**. The City will accept requests for clarifications, questions and comments via email to mmartinez@coachella.org and must be clearly labeled, "Written Questions" in the subject line. The City is not responsible for failure to

respond to a request that has not been labeled as such. Inquiries received after **5pm on February 26, 2014** will not be accepted.

5. City Responses. Responses from the City to substantive questions will be posted online on the City's website and be emailed to all Bidder's whom requested, in writing, to be listed on this RFPs Bidder's List, no later than 72 hours prior to Bid Due date and Time. It is the responsibility of the bidders to make sure they have received all addenda prior to submitting their bid. The Tentative Schedule may change at any time. Any and all changes to the Tentative Schedule will be made by way of addendum. If an Addendum is issued less than 72 hours before the Bid Due Date and Time, the Bid Due date will be extended.

6. Submission of Proposal. A proposal must be submitted in a sealed opaque envelope that clearly identifies the proposer and the project. Proposals must be received by the time and at the place set forth in the Notice Inviting Proposals and may be withdrawn only as stated in the proposal.

7. Bid Delivery. Sealed bids shall be delivered to the below address:

City of Coachella
Public Works Department
53462 Enterprise Way
Coachella, CA 92236

Bids may be delivered in person or by other delivery methods. It is the sole responsibility of bidders to ensure that their bids are received at the time and place indicated in the NIB. **Late or misdirected bids shall be rejected and unopened without exception. Postmarks are not accepted.**

An original and four (4) copies of the proposal shall be submitted for consideration no later than **2 P.M. on March 5, 2014.** The proposal shall be submitted in two (2) separate sealed envelopes. The first envelope shall contain the *Consultant's Information*. The envelope containing this information should be clearly labeled: "RESPONSE TO REQUEST FOR PROPOSAL – PUBLIC RELATION SERVICES – CITY OF COACHELLA -PART I - ATTN: MARITZA MARTINEZ - **DO NOT OPEN WITH REGULAR MAIL.**" The second envelope shall contain the *Consultant's Proposal*. The envelope containing this information should be clearly labeled: "RESPONSE TO REQUEST FOR PROPOSAL – PUBLIC RELATION SERVICES - CITY OF COACHELLA – PART II – ATTN: MARITZA MARTINEZ - **DO NOT OPEN WITH REGULAR MAIL.**"

8. Contract Documents. The complete Contract Documents are identified in the Agreement. Potential proposers are cautioned that the successful proposer incurs duties and obligations under all Contract Documents.

9. Contract Term. The term of the initial contract will be for TWENTY FOUR (24) MONTHS beginning on or about April 1, 2014. The City may elect to exercise an extension to renew this contract for an additional one (1) year term.

10. Contract Renewal. The Contract may be extended by the City for a one (1) year option renewal period under the terms and conditions of the original contract, upon execution of an Amendment to the Contract by both parties. Should the City elect to exercise the option to extend this agreement for an additional one (1) year period, the Parties shall negotiate pricing for such period two months prior to the commencement of the additional one (1) year period.

11. Acceptance of Bids. The City reserves the right to accept or reject any and all bids, or any item or part thereof, or to waive any informalities or irregularities in bids. The City reserves the right to withdraw this NIB at any time without prior notice and the City makes no representations that any contract will be awarded to any Bidder responding to this NIB. The City reserves the right to postpone any bid opening for its own convenience.

12. Proposals. Proposals are required for the entire work. The amount of the proposal for comparison purposes will be the total of all items.

The evaluation of proposals and award of contract shall be based solely on the final decision of the City. The City reserves the right to award the contract on either of the schedules or any combination of levels of service to the firm whose proposal is determined to be in the best interests of the City.

13. Selection Criteria. Selection will be a two part process.

STEP 1.

The **PART I** section of all submitted proposals will be rated based on review and evaluation by a four (4) member selection panel. Rating criteria will be as follows:

| | |
|---|-----------------------|
| • Consultant References and Staffing Team Qualifications | 25 pts. |
| • Consultant Firm Experience, Qualifications and Resources | 15 pts. |
| • Method of Approach | 30pts. |
| • Content Detail in Scope of Work Response | 25 pts. |
| • <u>Completeness/Thoroughness/Neatness of Submittal</u> | <u>05 pts.</u> |
| TOTAL POSSIBLE SCORE | 100 pts. |

Proposals that omit responses to any of the above categories, or whose response to any category receives an aggregate rating of zero ("0"), may be rejected.

Proposing firms receiving a minimum aggregate total of 325 points from the selection panel will be placed on a "short list."

STEP 2.

The **PART II** section for all firms meeting the Step 1. criteria set forth above will be opened, and analyzed by the staff selection panel. In making this analysis, the panel will:

- Compare annual, monthly, assignment specific costs and hourly rates.
- Consider the financial proposal's relation to City budgets approved for this project, as well as to current, and historical costs incurred by the City for work of similar scope. Based on its analysis, staff may ask the selected proposer to explain, and/or clarify the firm's requested financial compensation.
- Determine whether the requested compensation is consistent with firm's proposed staffing, material, and asset commitments, as well as with the City's established project budget and contracting policies, and procedures.

After completing the analysis of the firms' Part II. submittal, the panel will select a firm whose demonstrated competence, comprehension of Scope of Work, and reasonableness of price quotation for quality of services offered make it the top-ranked proposer. This firm shall be invited to an interview with City staff to discuss its Part I. and II submittals, and to negotiate a contract if the City determines such negotiation is in the City's best interest. The goal of negotiation is to agree on a final contract that delivers to the City the services required at a fair and reasonable cost.

If the City cannot reach an agreement with the top-ranked proposing firm, a new negotiation will be started with the next highest ranked firm. The negotiation process will be repeated as necessary until a contract is negotiated successfully with a short listed firm, or until staff makes a recommendation to reject all proposals.

14. Award of Contract. Acceptance by the City at a meeting regularly called and held of a Consultant's Proposal authorizes City to enter into a contract subject to the execution by both Consultant and City of a written agreement evidencing said contract, and Consultant providing all requirements set forth in said contract. Consultant is advised that the City has up to 90 days from Award of Contract within which to issue the Notice to Proceed.

15. Qualifications of Proposers. No award will be made to any proposer who cannot give satisfactory assurance to the City as to his own ability to carry out the contract, by reason of his previous experience as a consultant on work of the nature contemplated in the contract. The proposer may be required to submit its record of work of similar nature to that proposed under these specifications, and unfamiliarity with the type of work may be sufficient cause for rejection of proposal.

16. Force Majeure. If execution of this contract shall be delayed or suspended and if such failure arises out of causes beyond the control of and without fault or negligence of the successful Bidder, the successful Bidder shall notify the City, in writing, within twenty-four (24) hours, after the delay. Such causes may include but are not limited to act of God, war, acts of a public enemy, acts of any governmental

entity in its sovereign or contractual capacity, fires, floods, epidemics, strikes and unusually severe weather.

17. Primary Bidders. No person, organization, or corporation is allowed to make submit, or be interested in more than one Bid unless in a sub-contractual relationship with respect to the Bids. A person, organization or corporation submitting sub-proposals or quoting prices on materials to Bidders is prevented from submitting a Bid to the City as a primary bidder.

18. Laws Governing Contract. This contract shall be in accordance with the laws of the state of California. The parties stipulate that this contract was entered into in the County of Riverside, in state of California. The parties further stipulate that the county of Riverside, California, is the only appropriate forum for any litigation resulting from a breach hereof or any questions risen here from.

19. Filing of Bid Protests. Bidders may file a “protest” of a Bid with the City’s Public Works Department. In order for a Bidder’s protest to be considered valid, the protest must:

- a. Be filed in writing within five (5) calendar days after the bid opening date;
- b. Clearly identify the specific irregularity or accusation;
- c. Clearly identify the specific City staff determination or recommendation being protested;
- d. Specify, in detail, the grounds of the protest and the facts supporting the protest; and
- e. Include all relevant, supporting documentation with the protest at time of filing.

If the protest does not comply with each of the requirements, it will be rejected as invalid.

If the protest is valid, the City’s Public Works Director, or other designated City staff member, shall review the basis of the protest and all relevant information. The Public Works Director will provide a written decision to the protestor within fourteen (14) calendar days.

CONSULTANT'S INFORMATION - PART I

- A. Company & Individual Qualifications, Experience and Expertise.
 - a. Designation of the principals or partners who will actually perform the work for the proposed agreement.
 - b. Designation and background information of other staff members who may assist the principal or partner in this assignment.
 - c. Provide a brief history of the organization and firm's experience with public relations completed during the past three years: list agency name, contact name, agency address, contact phone number(s) and identify if agency is a municipality/other public sector agency/private sector agency.
 - d. Provide a list of specific qualifications the Consultant has in supplying in public relations services listed in this proposal, including any professional designations and affiliations, certifications or licenses, etc.

- B. Method of Approach and Scope of Work
 - a. Describe methods to be utilized to ensure positive media for city projects, events and press releases.
 - b. Arrange for, and coordinate, media coverage of issues before the City; including organizing press conferences, interviews and arranging appearances on the appropriate media outlets. Provide guidance to City representatives in advance of public appearance and media coverage events, as directed by the City.
 - c. Make recommendations to the City for more timely, transparent and effective communication with residents, businesses, guests of the City.
 - d. Develop an annual city newsletter and manage distribution of electronic and print forms of the newsletter.
 - e. Assist in development of educational materials, news stories, and briefing documents on current issues as well as long term matters, to ensure the quality and consistency of information provided to the public. This will include writing technical information, developing graphic content for print, and developing graphic information for the City's website.
 - f. Provide revisions and recommendations to content and presentation of content on the City's web page; including submission of photos, written material and graphics.
 - g. Develop and present special reports to City Council as needed/requested.
 - h. Negotiate with vendors for advertising, special promotional campaigns, and public service announcements requested by City Staff to the media including TV spots, radio spots, etc.
 - i. Attend weekly executive meetings and bi-monthly Council Meeting.

CONSULTANT'S PROPOSAL - PART II

- A. Consultant's budget should assume that the printing and distribution of printed documents will be performed at the cost of the City; not to be included in the Agreement costs.
- B. Include annual contract costs, monthly contract costs, specific assignment costs. Assume that the consultant will work a minimum of sixteen (16) hours per month pursuant to the Contract Agreement. Include hourly rate for additional hours per monthly period as approved by City. Include additional cost for "emergency response."
- C. Describe what will be included in monthly billing. Include description of the types of services to be provided and a budget for a typical month, showing estimated billed hours, hourly billing rate, and an estimate of reimbursable costs.

CONTRACT AGREEMENT

CITY OF COACHELLA PROFESSIONAL SERVICES AGREEMENT

1. PARTIES AND DATE.

This Agreement is made and entered into this ____ day of _____, 20__, by and between the City of Coachella, a municipal organization organized under the laws of the State of California with its principal place of business at 1515 Sixth Street, Coachella, California 92236 ("City") and [__INSERT NAME__], a [__INSERT TYPE OF ENTITY - CORPORATION, PARTNERSHIP, SOLE PROPRIETORSHIP OR OTHER LEGAL ENTITY]__] with its principal place of business at [__INSERT ADDRESS__] ("Consultant"). City and Consultant are sometimes individually referred to as "Party" and collectively as "Parties."

2. RECITALS.

2.1 City. City is a municipal corporation organized under the laws of the State of California, with power to contract for services necessary to achieve its purpose.

2.2 Consultant. Consultant desires to perform and assume responsibility for the provision of certain professional services required by the City on the terms and conditions set forth in this Agreement. Consultant represents that it is experienced in providing [__INSERT TYPE OF SERVICES__] services to public clients, is licensed in the State of California, and is familiar with the plans of City.

2.3 Project. City desires to engage Consultant to render such services for the [__INSERT NAME OF PROJECT__] project ("Project") as set forth in this Agreement.

3. TERMS.

3.1 Scope of Services and Term.

3.1.1 General Scope of Services. Consultant promises and agrees to furnish to the City all labor, materials, tools, equipment, services, and incidental and customary work necessary to fully and adequately supply the professional [__INSERT TYPE OF SERVICES__] consulting services necessary for the Project ("Services"). The Services are more particularly described in Exhibit "A" attached hereto and incorporated herein by reference. All Services shall be subject to, and performed in accordance with, this Agreement, the exhibits attached hereto and incorporated herein by reference, and all applicable local, state and federal laws, rules and regulations.

3.1.2 Term. The term of this Agreement shall be from [__INSERT START DATE__] to [__INSERT ENDING DATE__], unless earlier terminated as provided herein. Consultant shall complete the Services within the term of this Agreement, and shall meet any other established schedules and deadlines. *****INSERT IF DESIRED BY CITY:** City alone (not the Consultant) shall have the option to extend the term of this Agreement for two (2) successive one (1) year periods (individually, “Subsequent Term” and collectively, “Subsequent Terms”) on the same terms and conditions as set forth in this Agreement (including, without limitation, the rates set forth in the Compensation Schedule attached hereto as Exhibit “C” and incorporated by reference herein); provided however, that the amount of the total compensation, including authorized reimbursements, for any Services rendered in any Subsequent term(s) (if such Subsequent Term(s) is desired by City), shall not exceed the amount required to be appropriated by City, in its sole and absolute discretion. Such extension(s) shall be made by City providing written notice to Consultant. Consultant shall complete the Services within the applicable Term of the Agreement, and shall meet any other established schedules and deadlines as may be set by City staff on an on-call and as-needed basis from time to time.***]

3.2 Responsibilities of Consultant.

3.2.1 Control and Payment of Subordinates; Independent Contractor. The Services shall be performed by Consultant or under its supervision. Consultant will determine the means, methods and details of performing the Services subject to the requirements of this Agreement. City retains Consultant on an independent contractor basis and not as an employee. Consultant retains the right to perform similar or different services for others during the term of this Agreement. Any additional personnel performing the Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant’s exclusive direction and control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers’ compensation insurance.

3.2.2 Schedule of Services. Consultant shall perform the Services expeditiously, within the term of this Agreement, and in accordance with the Schedule of Services set forth in Exhibit “B” attached hereto and incorporated herein by reference. Consultant represents that it has the professional and technical personnel required to perform the Services in conformance with such conditions. In order to facilitate Consultant’s conformance with the Schedule, City shall respond to Consultant’s submittals in a timely manner. Upon request of City, Consultant shall provide a more detailed schedule of anticipated performance to meet the Schedule of Services.

3.2.3 Conformance to Applicable Requirements. All work prepared by Consultant shall be subject to the approval of City.

3.2.4 Substitution of Key Personnel. Consultant has represented to City that certain key personnel will perform and coordinate the Services under this Agreement. Should

one or more of such personnel become unavailable, Consultant may substitute other personnel of at least equal competence upon written approval of City. In the event that City and Consultant cannot agree as to the substitution of key personnel, City shall be entitled to terminate this Agreement for cause. As discussed below, any personnel who fail or refuse to perform the Services in a manner acceptable to the City, or who are determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project or a threat to the safety of persons or property, shall be promptly removed from the Project by the Consultant at the request of the City. The key personnel for performance of this Agreement are as follows: [__INSERT NAMES__].

3.2.5 City's Representative. The City hereby designates [__INSERT NAME OR TITLE__], or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). City's Representative shall have the power to act on behalf of the City for all purposes under this Contract. Consultant shall not accept direction or orders from any person other than the City's Representative or his or her designee.

3.2.6 Consultant's Representative. Consultant hereby designates [__INSERT NAME OR TITLE__], or his or her designee, to act as its representative for the performance of this Agreement ("Consultant's Representative"). Consultant's Representative shall have full authority to represent and act on behalf of the Consultant for all purposes under this Agreement. The Consultant's Representative shall supervise and direct the Services, using his best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the Services under this Agreement.

3.2.7 Coordination of Services. Consultant agrees to work closely with City staff in the performance of Services and shall be available to City's staff, consultants and other staff at all reasonable times.

3.2.8 Standard of Care; Performance of Employees. Consultant shall perform all Services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Consultant represents and maintains that it is skilled in the professional calling necessary to perform the Services. Consultant warrants that all employees and subcontractors shall have sufficient skill and experience to perform the Services assigned to them. Finally, Consultant represents that it, its employees and subcontractors have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the Services, including a City Business License, and that such licenses and approvals shall be maintained throughout the term of this Agreement. As provided for in the indemnification provisions of this Agreement, Consultant shall perform, at its own cost and expense and without reimbursement from the City, any services necessary to correct errors or omissions which are caused by the Consultant's failure to comply with the standard of care provided for herein. Any employee of the Consultant or its sub-consultants who is determined by the City to be uncooperative, incompetent, a threat to the adequate or timely completion of the Project, a threat to the safety of persons or property, or any employee who fails or refuses to perform the Services

in a manner acceptable to the City, shall be promptly removed from the Project by the Consultant and shall not be re-employed to perform any of the Services or to work on the Project.

3.2.9 Laws and Regulations. Consultant shall keep itself fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, including all Cal/OSHA requirements, and shall give all notices required by law. Consultant shall be liable for all violations of such laws and regulations in connection with Services. If the Consultant performs any work knowing it to be contrary to such laws, rules and regulations and without giving written notice to the City, Consultant shall be solely responsible for all costs arising therefrom. Consultant shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

3.2.10 Insurance.

3.2.10.1 Time for Compliance. Consultant shall not commence the Services under this Agreement until it has provided evidence satisfactory to the City that it has secured all insurance required under this section. In addition, Consultant shall not allow any subcontractor to commence work on any subcontract until it has provided evidence satisfactory to the City that the subcontractor has secured all insurance required under this section.

3.2.10.2 Minimum Requirements. Consultant shall, at its expense, procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Agreement by the Consultant, its agents, representatives, employees or subcontractors. Consultant shall also require all of its subcontractors to procure and maintain the same insurance for the duration of the Agreement. Such insurance shall meet at least the following minimum levels of coverage:

(A) Minimum Scope of Insurance. Coverage shall be at least as broad as the latest version of the following: (1) *General Liability*: Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001); (2) *Automobile Liability*: Insurance Services Office Business Auto Coverage form number CA 0001, code 1 (any auto); and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(B) Minimum Limits of Insurance. Consultant shall maintain limits no less than: (1) *General Liability*: One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement/location or the general aggregate limit shall be twice the required occurrence limit; (2) *Automobile Liability*: One Million Dollars (\$1,000,000) per accident for bodily injury and property damage; and (3) *Workers' Compensation and Employer's Liability*: Workers' Compensation limits as required by the Labor Code of the State of California. Employer's Liability limits of One Million Dollars (\$1,000,000)

per accident for bodily injury or disease. **[NOTE: IF THE SCOPE OF A PROJECT IS OF SUCH A VALUE THAT MORE THAN A MINIMUM INSURANCE OF ONE MILLION DOLLARS APPEARS NECESSARY, PLEASE CHECK WITH THE CITY'S RISK MANAGER.]**

3.2.10.3 Professional Liability. **[INCLUDE ONLY IF APPLICABLE - DELETE OTHERWISE]** Consultant shall procure and maintain, and require its sub-consultants to procure and maintain, for a period of five (5) years following completion of the Services, errors and omissions liability insurance appropriate to their profession. Such insurance shall be in an amount not less than \$1,000,000 **[INCREASE IF NECESSARY - OTHERWISE LEAVE AS IS AND DELETE THIS NOTE]** per claim, and shall be endorsed to include contractual liability.

3.2.10.4 Insurance Endorsements. The insurance policies shall contain the following provisions, or Consultant shall provide endorsements on forms supplied or approved by the City to add the following provisions to the insurance policies:

(A) General Liability. The general liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the Services or operations performed by or on behalf of the Consultant, including materials, parts or equipment furnished in connection with such work; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(B) Automobile Liability. The automobile liability policy shall be endorsed to state that: (1) the City, its directors, officials, officers, employees, agents and volunteers shall be covered as additional insureds with respect to the ownership, operation, maintenance, use, loading or unloading of any auto owned, leased, hired or borrowed by the Consultant or for which the Consultant is responsible; and (2) the insurance coverage shall be primary insurance as respects the City, its directors, officials, officers, employees, agents and volunteers, or if excess, shall stand in an unbroken chain of coverage excess of the Consultant's scheduled underlying coverage. Any insurance or self-insurance maintained by the City, its directors, officials, officers, employees, agents and volunteers shall be excess of the Consultant's insurance and shall not be called upon to contribute with it in any way.

(C) Workers' Compensation and Employers Liability Coverage. The insurer shall agree to waive all rights of subrogation against the City, its directors, officials, officers, employees, agents and volunteers for losses paid under the terms of the insurance policy which arise from work performed by the Consultant.

(D) All Coverages. Each insurance policy required by this Agreement shall be endorsed to state that: (A) coverage shall not be suspended, voided, reduced or canceled except after thirty (30) days prior written notice by certified mail, return receipt

requested, has been given to the City; and (B) any failure to comply with reporting or other provisions of the policies, including breaches of warranties, shall not affect coverage provided to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.5 Separation of Insureds; No Special Limitations. All insurance required by this Section shall contain standard separation of insureds provisions. In addition, such insurance shall not contain any special limitations on the scope of protection afforded to the City, its directors, officials, officers, employees, agents and volunteers.

3.2.10.6 Deductibles and Self-Insurance Retentions. Any deductibles or self-insured retentions must be declared to and approved by the City. Consultant shall guarantee that, at the option of the City, either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its directors, officials, officers, employees, agents and volunteers; or (2) the Consultant shall procure a bond guaranteeing payment of losses and related investigation costs, claims and administrative and defense expenses.

3.2.10.7 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best's rating no less than A-:VII, licensed to do business in California, and satisfactory to the City.

3.2.10.8 Verification of Coverage. Consultant shall furnish City with original certificates of insurance and endorsements effecting coverage required by this Agreement on forms satisfactory to the City. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf, and shall be on forms provided by the City if requested. All certificates and endorsements must be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, at any time.

3.2.11 Safety. Consultant shall execute and maintain its work so as to avoid injury or damage to any person or property. In carrying out its Services, the Consultant shall at all times be in compliance with all applicable local, state and federal laws, rules and regulations, and shall exercise all necessary precautions for the safety of employees appropriate to the nature of the work and the conditions under which the work is to be performed. Safety precautions as applicable shall include, but shall not be limited to: (A) adequate life protection and life saving equipment and procedures; (B) instructions in accident prevention for all employees and subcontractors, such as safe walkways, scaffolds, fall protection ladders, bridges, gang planks, confined space procedures, trenching and shoring, equipment and other safety devices, equipment and wearing apparel as are necessary or lawfully required to prevent accidents or injuries; and (C) adequate facilities for the proper inspection and maintenance of all safety measures.

3.3 Fees and Payments.

3.3.1 Compensation. Consultant shall receive compensation, including authorized reimbursements, for all Services rendered under this Agreement at the rates set forth in Exhibit "C" attached hereto and incorporated herein by reference. The total compensation

shall not exceed [___INSERT WRITTEN DOLLAR AMOUNT___] (\$[___INSERT NUMERICAL DOLLAR AMOUNT___]) without written approval of City's [___INSERT TITLE___]. Extra Work may be authorized, as described below; and if authorized, said Extra Work will be compensated at the rates and manner set forth in this Agreement.

3.3.2 Payment of Compensation. Consultant shall submit to City a monthly itemized statement which indicates work completed and hours of Services rendered by Consultant. The statement shall describe the amount of Services and supplies provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the statement. City shall, within forty-five (45) days of receiving such statement, review the statement and pay all approved charges thereon.

3.3.3 Reimbursement for Expenses. Consultant shall not be reimbursed for any expenses unless authorized in writing by City.

3.3.4 Extra Work. At any time during the term of this Agreement, City may request that Consultant perform Extra Work. As used herein, "Extra Work" means any work which is determined by City to be necessary for the proper completion of the Project, but which the Parties did not reasonably anticipate would be necessary at the execution of this Agreement. Consultant shall not perform, nor be compensated for, Extra Work without written authorization from City's Representative.

3.3.5 Prevailing Wages. Consultant is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. [___INSERT "IF" OR "SINCE" AS APPLICABLE___] the Services are being performed as part of an applicable "public works" or "maintenance" project, as defined by the Prevailing Wage Laws, and [___INSERT "IF" OR "SINCE" AS APPLICABLE___] the total compensation is One Thousand Dollars (\$1,000) or more, Consultant agrees to fully comply with such Prevailing Wage Laws. City shall provide Consultant with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Consultant shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Consultant's principal place of business and at the project site. Consultant shall defend, indemnify and hold the City, its elected officials, officers, employees, volunteers and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

3.4 Accounting Records.

3.4.1 Maintenance and Inspection. Consultant shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Consultant shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Consultant shall allow inspection of all

work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

3.5 General Provisions.

3.5.1 Termination of Agreement.

3.5.1.1 Grounds for Termination. City may, by written notice to Consultant, terminate the whole or any part of this Agreement at any time and without cause by giving written notice to Consultant of such termination, and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. Upon termination, Consultant shall be compensated only for those services which have been adequately rendered to City, and Consultant shall be entitled to no further compensation. Consultant may not terminate this Agreement except for cause.

3.5.1.2 Effect of Termination. If this Agreement is terminated as provided herein, City may require Consultant to provide all finished or unfinished Documents and Data and other information of any kind prepared by Consultant in connection with the performance of Services under this Agreement. Consultant shall be required to provide such documents and other information within fifteen (15) days of the request.

3.5.1.3 Additional Services. In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, services similar to those terminated.

3.5.2 Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective Parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

| | |
|----------------------------|--------------------------------|
| <u>City</u> | <u>Consultant</u> |
| City of Coachella | [__INSERT NAME__] |
| 1515 Sixth Street | [__INSERT ADDRESS__] |
| Coachella, CA 92236 | [__INSERT ADDRESS__] |
| Attn: [INSERT NAME] | Attn: [__INSERT NAME__] |

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

3.5.3 Ownership of Materials and Confidentiality.

3.5.3.1 Documents & Data; Licensing of Intellectual Property. This Agreement creates a non-exclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be

prepared by Consultant under this Agreement (“Documents & Data”). Consultant shall require all subcontractors to agree in writing that City is granted a non-exclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Consultant represents and warrants that Consultant has the legal right to license any and all Documents & Data. Consultant makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Consultant or provided to Consultant by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City’s sole risk.

3.5.3.2 Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents and Data either created by or provided to Consultant in connection with the performance of this Agreement shall be held confidential by Consultant. Such materials shall not, without the prior written consent of City, be used by Consultant for any purposes other than the performance of the Services. Nor shall such materials be disclosed to any person or entity not connected with the performance of the Services or the Project. Nothing furnished to Consultant which is otherwise known to Consultant or is generally known, or has become known, to the related industry shall be deemed confidential. Consultant shall not use City’s name or insignia, photographs of the Project, or any publicity pertaining to the Services or the Project in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

3.5.4 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate or convenient to attain the purposes of this Agreement.

3.5.5 Attorney’s Fees. If either Party commences an action against the other Party, either legal, administrative or otherwise, arising out of or in connection with this Agreement, the prevailing party in such litigation shall be entitled to have and recover from the losing party reasonable attorney’s fees and all other costs of such action.

3.5.6 Indemnification. Consultant shall defend, indemnify and hold the City, its officials, officers, employees, volunteers and agents free and harmless from any and all claims, demands, causes of action, costs, expenses, liability, loss, damage or injury, in law or equity, to property or persons, including wrongful death, in any manner arising out of or incident to any negligent acts or omissions or willful misconduct of Consultant, its officials, officers, employees, agents, consultants and contractors arising out of or in connection with the performance of the Services, the Project or this Agreement, including without limitation the payment of all consequential damages and attorneys fees and other related costs and expenses. Consultant shall defend, at Consultant’s own cost, expense and risk, any and all such aforesaid suits, actions or other legal proceedings of every kind that may be brought or instituted against City, its directors, officials, officers, employees, agents or volunteers. Consultant shall pay and satisfy any such judgment, award or decree that may be rendered against City or its directors, officials, officers, employees, agents or volunteers, in any such suit, action or other legal proceeding. Consultant shall reimburse City and its directors, officials, officers, employees,

agents and/or volunteers, for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Consultant's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the City, its directors, officials, officers, employees, agents or volunteers.

3.5.7 Entire Agreement. This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

3.5.8 Governing Law. This Agreement shall be governed by the laws of the State of California. Venue shall be in Riverside County.

3.5.9 Time of Essence. Time is of the essence for each and every provision of this Agreement.

3.5.10 City's Right to Employ Other Consultants. City reserves right to employ other consultants in connection with this Project.

3.5.11 Successors and Assigns. This Agreement shall be binding on the successors and assigns of the Parties.

3.5.12 Assignment or Transfer. Consultant shall not assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the City. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer.

3.5.13 Construction; References; Captions. Since the Parties or their agents have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days. All references to Consultant include all personnel, employees, agents, and subcontractors of Consultant, except as otherwise specified in this Agreement. All references to City include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

3.5.14 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

3.5.15 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual rights by custom, estoppel, or otherwise.

3.5.16 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

3.5.17 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

3.5.18 Prohibited Interests. Consultant maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement. Further, Consultant warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Consultant, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

3.5.19 Equal Opportunity Employment. Consultant represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. Consultant shall also comply with all relevant provisions of any City's Minority Business Enterprise program, Affirmative Action Plan or other related programs or guidelines currently in effect or hereinafter enacted.

3.5.20 Labor Certification. By its signature hereunder, Consultant certifies that it is aware of the provisions of Section 3700 of the California Labor Code which require every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and agrees to comply with such provisions before commencing the performance of the Services.

3.5.21 Authority to Enter Agreement. Consultant has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

3.5.22 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original.

3.6 Subcontracting.

3.6.1 Prior Approval Required. Consultant shall not subcontract any portion of the work required by this Agreement, except as expressly stated herein, without prior written approval of City. Subcontracts, if any, shall contain a provision making them subject to all provisions stipulated in this Agreement.

[SIGNATURES ON FOLLOWING PAGE.]

CITY OF COACHELLA

[INSERT CONSULTANT'S NAME]

By: _____
Gene Rogers
Interim City Manager

By: _____
[INSERT NAME]
[INSERT TITLE]

[or]

By: _____
Eduardo Garcia
Mayor

Attest:

By: _____
City Clerk

Approved as to Form:

****Approved Form****
Best Best & Krieger LLP
City Attorney

EXHIBIT “A”
SCOPE OF SERVICES
[INSERT SCOPE]

EXHIBIT “B”

SCHEDULE OF SERVICES

[INSERT SCHEDULE]

EXHIBIT “C”

COMPENSATION

[INSERT RATES & AUTHORIZED REIMBURSABLE EXPENSES]